

**United States Postal Service and Mid-Hudson Area Local, American Postal Workers Union, AFL-CIO.** Cases 3-CA-15258(P), 3-CA-15259(P), and 3-CA-15326(P)

June 25, 1991

**DECISION AND ORDER**

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

On June 7, 1990, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed exceptions, a supporting brief, and a brief in reply to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions<sup>1</sup> and to adopt the recommended Order.

**AMENDED CONCLUSION OF LAW**

Substitute the following for Conclusion of Law 3.

"3. The American Postal Workers Union is the recognized bargaining representative, and the Mid-Hudson Area Local is the designated authorized agent of the APWU for certain aspects of collective bargaining for the following employees of the Respondent:

Maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks."

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United States Postal Service, Poughkeepsie, Wappingers Falls, Wallkill, and Walden, New York, its officers, agents, successors,

<sup>1</sup> The Respondent excepts to the judge's conclusion of law that the APWU, and through it, the Mid-Hudson Area Local, is the exclusive collective-bargaining representative of Respondent's relevant bargaining unit employees. It asserts that the APWU, not the Local, is the recognized bargaining representative of the relevant employees. We find merit in this exception.

The Respondent, however, admits the amended complaint allegation that the Mid-Hudson Area Local, a subdivision of the APWU, has been authorized by the APWU "to act as its designated agent in certain aspects of collective bargaining for the Unit in connection with the Wappingers Falls SCF and the Wallkill and Walden facilities." The Respondent also does not dispute that the Local is the authorized representative of the Respondent's relevant employees for the purposes of adjusting and implementing grievances at the initial steps of the grievance arbitration procedure.

We shall correct the Conclusions of Law accordingly.

and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

**APPENDIX**

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to furnish Mid-Hudson Area Local, American Postal Workers Union, AFL-CIO with information that it requested that is relevant and necessary to the Union's function as the designated agent of the American Postal Workers Union, AFL-CIO for certain aspects of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, promptly furnish the Union with the following information:

(a) The Form 50s for Joan Eichler and Mary White and any information in their personnel files regarding the conversion at the Wallkill, New York post office as requested by the Union on August 1, 1989.

(b) The timecards and attendance and other records of the letter carriers at the Wallkill, New York post office, as and for the period requested by the Union on November 4, 1989.

(c) The daily mail volumes count sheets for Tour III at the Wappingers Falls facility, as requested by the Union on November 13 and 20, 1989.

(d) The LSM rotation lists for Tour III, as requested by the Union on November 13 and 20, 1989.

**UNITED STATES POSTAL SERVICE**

*Alfred M. Norek, Esq.*, for the General Counsel.  
*Andrew L. Freeman, Esq.*, for the Respondent.

**DECISION**

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on March 29, 1990, in Poughkeepsie, New York. The order further consolidating cases, amended consolidated complaint, and notice of hearing herein, which issued on January 25, 1990, was based on a charge and amended unfair labor practice charge filed in Case 3-CA-

15258(P) by Mid-Hudson Area Local, American Postal Workers Union, AFL-CIO (the Union), on October 30, 1989,<sup>1</sup> and December 8; the charge and amended charge in Case 3-CA-15259(P) were filed by the Union on October 30 and December 8; and the charge and amended charge in Case 3-CA-15326(P) were filed by the Union on December 4 and January 25, 1990. The consolidated complaint alleges that since about August 1, the Union has requested that United States Postal Service (Respondent), furnish it with certain information which is relevant to the Union as the exclusive collective-bargaining representative of certain of Respondent's employees at facilities in the area, but that Respondent has failed and refused to provide this information in violation of Section 8(a)(1)(5) of the Act. It is also alleged that since about September 19, Respondent has refused to meet with the alternate union stewards for step 2 grievance meetings, also in violation of Section 8(a)(1)(5) of the Act. On the entire record, I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

Respondent admits and I find that the Board has jurisdiction over Respondent by virtue of Section 1209 of the PRA.

##### II. LABOR ORGANIZATION STATUS

The complaint alleges, and Respondent denies, that the Union is a labor organization within the meaning of Section 2(5) of the Act. The parties stipulated that the American Postal Workers Union, AFL-CIO (APWU), is a labor organization within the meaning of Section 2(5) of the Act. Stephen Duncan, president of, and a shop steward for, the Union, testified that employees participate in the Union by attending monthly meetings and filing grievances. In addition, members serve as shop stewards for the Union. He also testified that the Union exists to deal with Respondent concerning grievances, labor disputes, wages, hours, and conditions of employment. I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE FACTS

For many years, Respondent has had collective-bargaining agreements with a number of unions (including APWU) covering its many classifications of employees. The most recent of said agreements is effective for the period July 21, 1987, through November 20, 1990, and is referred to as the Agreement. The Agreement recognizes APWU and National Association of Letter Carriers, AFL-CIO (NALC), "as the exclusive bargaining representative of all employees in the bargaining unit for which each has been recognized and certified at the national level." It then lists APWU for maintenance employees, postal clerks, motor vehicle employees, and special delivery messengers and NALC for city letter carriers. The Agreement then lists certain exclusions, such as guards, managerial, supervisory and professional employees, and rural letter carriers, who are covered by a separate agreement. The Agreement also provides a rather extensive grievance-arbitration provision. The Union handles an area beginning north of New York City and going northward to a point

south of Albany. Respondent has approximately 100 offices within this area, and APWU has approximately 600 members within this area; these are the people the Union services. The largest facility in this area is the Wappingers Falls facility. Briefly stated, this is the "clearinghouse" for incoming or outgoing mail for the area post offices. This facility works on a three shift—24 hours a day, 7 days a week basis. In it, the Union represents clerks, both window clerks, LSM clerks (those that operate the letter sorting machines) and maintenance employees. As per the terms of the Agreement, the Union has designated shop stewards to represent these employees. There are several distinct allegations herein. The first to be discussed below is that since about September, Respondent has refused to recognize or accept the Union's designation of *alternate* shop stewards, in violation of Section 8(a)(1) and (5) of the Act. The other allegations all involve the refusal to provide the Union with the following information:

- (a) 1986 conversion at the Walkill, New York post office.
- (b) Discipline of Daryl Castellana at the Walden, New York post office for tardiness.
- (c) Restrictions on stewards' activity at Wappingers Falls due to the alleged heavy workload.
- (d) LSM rotation lists at Wappingers Falls.

##### A. Refusal to Recognize Alternate Stewards

Article 17 of the Agreement provides for the designation of stewards and states further: "Each Union signatory to this Agreement will certify to the Employer in writing a steward or stewards and alternates in accordance with the following general guidelines." There follows a formula for the number of stewards allowed: for example, up to 49 employees—one steward, and up to 5 stewards for 500 or more employees, with variances in between. The instant dispute arose when the Union notified Respondent of the appointment of a number of alternate stewards. Respondent refused to recognize these stewards, alleging that these alternate stewards, together with the accepted stewards, exceed the formula in the Agreement for the maximum number of stewards permitted and, further, that recognizing these stewards for some of the grievances involved would require Respondent's representatives to meet to discuss grievances on Saturdays and Sundays, their normal days off.

The grievance procedure is set forth in the Agreement. Step 1 requires the employee to discuss the grievance with his/her immediate supervisor within fourteen days "of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause." The employee at this step may be accompanied by a steward or a union representative, and the Union may initiate a step 1 grievance, also within the 14-day time period. The Agreement provides that a grievance may be initiated by the Union at step 2 within the same 14-day period set forth above. In addition, if the step 1 discussions have been unsuccessful in resolving the grievance, the union steward or other representative will meet with Respondent's representative within 7 days of the appeal. If there is no agreement at step 2, Respondent's decision to this effect shall be furnished to the Union within 10 days of the step 2 meeting. The Union has 15 days from the receipt of this decision in which to appeal to step 3. Step 3 is handled outside the area and that,

<sup>1</sup>Unless otherwise indicated, all dates referred to herein are for the year 1989.

as well as subsequent procedures will not be discussed because they are not relevant to the instant matter.

Duncan testified that the reason the Union needs (and designated) alternate stewards is to cover periods when the regular stewards are not present at the facility. The facility runs 24 hours a day, 7 days a week (with only a partial third shift on Sunday) so there are shifts when the regular stewards are not present. In addition, stewards have days off, vacation time, and sick time when they are absent from the facility. These are the periods during which the alternate stewards are meant to cover. When an alternate steward is handling a grievance, he/she has all the powers and duties of a regular steward.

A local agreement between the Union and Respondent provides for monthly labor/management meetings to be held on the first Tuesday of each month. This agreement states further:

It is agreed that agenda items for discussion at the regular meetings shall be exchanged by the parties to this agreement at least three full workdays before the scheduled meeting. Items not placed on such agenda shall be discussed only by mutual consent of the parties.

There was such a labor/management meeting on the afternoon of September 5. By letter dated September 1, Frank Barton, Respondent's labor relations representative at the facilities in question, wrote to Duncan: "The following items are submitted as the management agenda for the Labor/Management meeting scheduled for September 5": included was the subject of alternate stewards and their release time. Duncan testified that he did not receive this letter until he reported for work on Tuesday, September 5; the prior day was Labor Day. Timothy Vaughn, the chief steward for the Union, attended this meeting on its behalf; at the meeting, when Respondent's representative requested discussion of alternate stewards, Vaughn stated that he would not discuss the issue at that time because the Union had not received notice of the agenda issue in a timely manner. Vaughn testified that prior to this meeting, he had discussions with Barton about alternate stewards, but prior to September 5, he did not know that Barton wanted to discuss the subject at that labor/management meeting. Barton testified that he left the September 1 letter for the Union in the usual place that Respondent placed mail for the Union—the desk of the superintendent's office. On September 1, he saw Vaughn holding the letter, and looking at it. Vaughn asked what this was about regarding the alternate stewards, and Barton said that it was on the agenda for September 5, and they would discuss it then. At the meeting, Vaughn refused to discuss this subject.

By letter dated September 6, John Gampia, wrote to Duncan informing him that Vaughn refused to discuss the alternate steward issue at the prior day's labor/management meeting. The letter stated further:

It is Management's intention to enforce the provisions of Article 17, Section 2-A which provides that no more than the authorized number of Stewards prescribed in the formula will be allowed official time for Stewards' duty. This means that Alternate Stewards will be granted official release time only in the absence of Stewards certified under the aforementioned formula. Such alter-

nate Stewards will be permitted to replace absent Stewards only in the work location in which the Steward and the Alternate Steward have been properly certified. Under no circumstances will Alternate Stewards be permitted release time, the result of which is to expand the number of stewards authorized by the formula. Consistent with the National Agreement, requests for Stewards' Duty Release Time will not be unreasonably denied.

Gampia's letter also requested that the Union submit an updated steward's designation for the area facilities. On September 14 (with similar letters on October 28 and November 28) the Union submitted steward designations to Respondent; in addition to the regular stewards, the designation listed one alternate steward for tour 1, two alternates for tour 2, and six alternates for tour 3. By letter dated September 19, Barton wrote to Duncan regarding grievances for which the Union had designated an alternate steward. Barton wrote:

Consistent with Management's position regarding official release time for Alternate Stewards, which was conveyed to you via letter dated 9-6-89 from the MSC Director, City Operations, official time for this purpose will not be afforded to Alternate Stewards, the result of which is to expand the number of Stewards authorized by the formula in Article 17, Section 2 of the National Agreement. I am therefore requesting that you advise this office as to the authorized Step 2 Union designee for these cases as soon as possible.

Between September 20 and November 15, Barton wrote identical letters to the Union, the only difference being the grievances they referred to—38 in total. By letters dated September 30 and November 2, Barton wrote to Duncan. Again, with the exception of the grievance citations (65 grievances) these are virtually identical letters, restating the position of the earlier letters that Respondent would not grant official time to alternate stewards, because that would expand the number of stewards authorized by the Agreement. The letters state:

I have repeatedly requested that you designate authorized representatives for Step 2 so that I may schedule meetings in a timely fashion. Your only response has been that you will not designate proper representatives for Step 2. Accordingly, it is my decision that the above referenced grievance appeals are rejected. The rationale for this decision is that for the reasons previously stated, they are not properly in the grievance/arbitration procedure.

At the request of the Union, on October 3, Lawrence Bocchiere, the regional coordinator for the APWU, wrote to Barry Malson, the labor relations manager for Respondent's Westchester division, regarding this dispute. Bocchiere informed Malson that Barton was refusing to honor, or meet with, the Union's appointment of stewards; Bocchiere also stated that their position was that a steward or representative designated to meet at step 2 does not come within the guidelines of the number of stewards allowed by the Agreement and that Respondent "must meet with the designated representative at Step 2 whether or not such steward was the

Step 1 steward of record or whether such steward falls within the aforementioned guidelines.”

On the following day, Duncan wrote to Barton regarding Barton’s letters to the Union regarding the alternate stewards. Duncan advised Barton to discuss these matters with Vaughan stating: “I am sure that we can resolve this issue at the Local level.”

By letter dated November 1, Duncan wrote to Bordanaro, the postmistress of the area, stating that Respondent is in violation of the Agreement (and Labor Law) for refusing to accept the Union’s designations of alternate stewards as step 2 designees. Respondent answered this letter with a letter dated November 27 from, Robert Smith, Respondent’s director of human resources, to Duncan. The crux of Smith’s letter is contained in the following paragraph:

It has never been Management’s position that Alternate Stewards will not be Step 2 Designees. It is our position that Alternate Stewards will not be provided official time, for this or any other purpose, when the result is to expand the number of paid stewards authorized under the formula in Article 17 of the National Agreement. It is our position that Alternate Stewards do not attain Steward’s status, including payment, when the authorized complement of Stewards is present. In essence, the Union may designate whomever it wishes as their designee at Step 2, however, payment shall be strictly in accordance Article 17, Sections 2 and 4 of the National Agreement.

This, apparently, settled the matter, so that Respondent accepted the Union’s designation of alternate stewards (even when it exceeded the formula), but in these situations did not grant official time (i.e., paid time) to the alternate to handle the grievance.

Barton testified to the reasons for requesting the Union to designate a proper representative and rejecting the Union’s grievances. As stated in his numerous letters to the Union dated from September 19 through November 2, all of the designees in these grievances were alternate stewards, and practically all the grievants were represented by regular (non-alternate) stewards who had their regular days off on the weekend (Friday through Monday). Barton testified that in order not to violate the formula set forth in the Agreement for the number of stewards allowed, he would have had to meet with the alternate steward at a time when the regular steward was not working—on the weekend—days that he, and a large majority of the grievants, do not work.

The consolidated complaint alleges that since about September 19, Respondent has failed and refused to meet with the alternate stewards designated by the Union, and has done so without prior notice to, or consent of, the Union and without having afforded the Union or APWU an opportunity to bargain about the subject, in violation of Section 8(a)(1) and (5) of the Act. I find this allegation to be without merit. This is not a situation of a unilateral change of an existing condition of employment; in fact, there is no evidence that Respondent had previously recognized alternate stewards in similar circumstances. Nor is this a situation involving a change without prior bargaining. What it is, is a dispute over contract interpretation of the Agreement’s formula for stewards and whether alternate stewards are included in that for-

mula, when regular stewards are available, an issue that, itself, should have been grieved and, if necessary, been decided by an arbitrator. That became unnecessary when, by Smith’s letter of November 27, Respondent agreed to recognize, but not pay, alternate stewards in these situations. An example of the lack of bad faith on the part of Respondent in this regard is that when it became evidence that this issue would become a problem, Respondent notified the Union that alternate stewards should be an agenda item at the September 5 meeting. The Union, claiming that it did not receive timely notice of this agenda item,<sup>2</sup> walked out rather than discuss this issue. *Missouri Portland Cement Co.*, 284 NLRB 432 (1987), cited by the General Counsel is instructive, but inappropriate. I therefore recommend that this allegation be dismissed.

### B. Walkill Conversion

Respondent employs both full-time and part-time employees; often employees are hired as part-time flexible employees (PTF), with no guaranteed hours, unlike the full-time employees who are covered by the Agreement. Conversion is when an employee goes from part-time to a full-time employee of Respondent. This dispute involves a conversion that occurred at the Walkill post office, a facility with about eight employees. Vaughn testified that sometime shortly before August 1, some employees from the Walkill facility informed him that there may have been an improper conversion at that facility. As a result of this, on August 1, he made a request for the following information on the standard form entitled: “Request For Information and Documents Relative to Processing & Grievance” regarding the Walkill facility: Seniority list for clerk craft employees; current full-time bid positions with job descriptions; Form 50 (a form generated by Respondent for any personnel action) for Joan Eichler and Mary White, and any information in OPF (official personnel folder) concerning the conversion of Mary White vs. Joan Eichler. He made this request in order to determine whether the conversion was done according to the Agreement. Vaughn testified that he was not provided with any of this information, nor an explanation why it was not provided. Subsequently, Vaughn filed all the proper papers and this grievance is presently awaiting action at step 3. On cross-examination, Vaughn testified that he does not know when the conversion in question took place and that since August 1, he has had a conversation with the Walkill postmaster, Angelo Santiamagro, but Santiamagro did not tell him of the seniority of the Walkill clerks in 1986. Santiamagro has been postmaster at Walkill since 1974. He testified that in November 1986, a full-time regular clerk’s position opened at that facility. Three part-time clerks were eligible for the conversion; in order of seniority (from most to least) they were Terry Charey, Joan Eichler, and Mary White. Charey was offered the job first, but she refused it. Eichler likewise was offered the job, but she also refused it. White accepted the position. The first time a grievance was filed on the subject

<sup>2</sup> Although not determinative of the issues herein, I credit the testimony of Barton that on September 1, he saw Vaughn read Respondent’s September 1 letter listing the proposed agenda items. I found Barton to be a credible witness who was willing to freely make admissions. While Vaughn was also an articulate and sometimes credible witness, I found him extremely defensive and restrictive on cross-examination. I therefore credit the testimony of Barton over that of Vaughn.

was in August, subsequent to the request for information made by the Union. He testified that at about that time, he received a telephone call from Vaughn asking about this conversion. Vaughn asked him about the seniority order in his post office and he told him the order, although he did not know the starting dates so he could not give Vaughn that information. Vaughn asked for, and Santiamagro told him of, the number of full-time positions at the facility, together with job descriptions. Vaughn asked for the Form 50s for Eichler and White. Santiamagro told him that there was nothing in Eichler's Form 50 stating that she declined the conversion and that White's Form 50 and folder was in Respondent's personnel office in Poughkeepsie. The grievance was denied as being untimely;<sup>3</sup> Santiamagro also added under "Management's Position": "Everybody in the office accepted the procedures." Additionally, Barton denied the grievance because Santiamagro had given Vaughn the information orally.

It should initially be stated that I found Santiamagro to be an articulate, direct, and very credible witness. On the other hand, Vaughn was evasive and, apparently, not credible in his testimony on this subject. I found especially disturbing the fact that he never mentioned the fact that the conversion occurred in 1986, and he testified that on cross-examination, that he did not know that it occurred in 1986. Even if he did not want to take Santiamagro's word for it, I assume that the union members at Walkill told him that it occurred in 1986. Having credited the testimony of Santiamagro over that of Vaughn, I find that in about July or August, he answered Vaughn's questions about the conversion, as recited, *supra*. The initial question therefore is whether an employer must provide a union with requested information, when the underlying dispute on which the request is made is untimely and could not result in a valid grievance. If yes, did Santiamagro's responses satisfy the request?

#### *C. Discipline of Castellana at Walden*

On October 24, Darryl Castellana, the union steward at the Walden post office, was given a written warning for excessive tardiness. On November 4, Castellana and Vaughn made a request for information on the standard form used by the parties. This request was for the following information for all the employees at the Walden post office, including letter carriers and rural carriers, not represented by APWU and the Union, and for J. Johnson (for the period while he was in the bargaining unit, before he became supervisor at the facility) for the period June 3 through October 16: timecards, Form 3971s (Respondent's form for notification of scheduled or unscheduled absences) and time and attendance records. Vaughn testified that he requested this information to insure the attendance rules were being followed uniformly for all employees at the Walden facility, including the letter carriers and the rural carriers who were represented by different labor organizations, although the letter carriers were covered by

the same Agreement. The Union's argument (for the future grievance) was that Castellana's warning was caused by disparate treatment for the union steward. Respondent supplied the information requested, but only for the APWU members; not for the letter carriers or rural carriers at Walden, nor for Johnson.

By letter dated November 15, Vaughn informed Barton:

As you are well aware, the Union has charged the Postal Service with disparate treatment (among other charges) openly displayed toward the grievant who is a union official (steward). The information that you are refusing to release to our labor organization is essential for comparative analysis to substantiate the union's contention of disparate treatment concerning irregular clock rings at the Walden Post Office.

By letter dated November 20, Barton again denied the request for non-APWU represented employees and, on December 7, the Union appealed this denial to step 3; no action has yet been taken on this appeal. Barton testified that he did not provide the Union with the information regarding the letter carriers and rural carriers because this information was not relevant to the dispute. The rural carriers have a separate collective-bargaining agreement; they do not punch a timeclock and are not paid on an hourly basis. Their pay is determined by a yearly evaluation of their route, which depends on the amount of mail on that rural route. Barton testified further that he did not provide the information regarding the letter carriers because of the nature of their work (as compared to the clerks) as it relates to tardiness. The clerk's job is to sort the mail and have it ready for the letter carriers to pick up to deliver. "There are different considerations. The tardiness of the person supposed to get the mail ready for the carriers could have a different impact on the operation than the carrier himself."

#### *D. Restrictions on Steward's Activities at Wappingers Falls*

Vaughn is a steward on the third shift at the Wappingers Falls facility—3–11 p.m. Prior to November, he and the other stewards were almost never restricted in conducting union business during working hours; they notified their immediate supervisor that they wished to conduct union business (investigate, process or adjust grievances, for example) and 95 percent of the time, permission would be granted. Beginning in November, and continuing for 3 months, the acting tour superintendent, Steve Nardo, had these requests denied from 6p.m. and thereafter almost on a daily basis, on the basis of heavy mail volume. Vaughn testified that this was the first occasion where the Union was so limited in conducting its business during working time. On November 13, Vaughn made an information request (on the standard form) for the mail volume count sheets at the facility "to determine whether heavy mail volume actually exists when you cut off union time." Vaughn testified:

So, if they showed us there was, in fact, heavy mail volume on everyday that they cut union time, then there would be some validity to their actions. And we were positive that it couldn't be consecutively for a three

<sup>3</sup>As stated, *supra*, the Agreement provides that the grievance must be brought "within fourteen days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause." Counsel for Respondent moved into evidence a decision of Herbert L. Marx Jr. in an arbitration between Respondent and APWU in Hartford, Connecticut, in 1984. In that case, the arbitrator found that even if the union filed the grievance promptly after learning of it, the grievance was untimely because the employee clearly knew about it more than 14 days before the grievance was filed.

month period on every—just about every service day that there's heavy mail volume.

Barton denied this request because the information “is a supervisory aid, is not an official record and is not retained. Therefore, it is not available.” Vaughn testified that he does not know whether that document is retained. He also testified (on cross-examination) that Respondent prepares, on a daily basis, a document which sets forth the total mail volume on a particular tour. The Union requested that document regarding the instant dispute and was given the document. On redirect, Vaughn attempted to differentiate between the daily mail volume count sheets that he requested (and was not given) and the total mail volume sheets which he was given. As best as I could understand, the only difference between the two is that the daily mail volume count sheets are available through the mail flow coordinator, at least, on an hourly basis.

Barton testified that the daily mail volume count sheets are the superintendent's notes which he makes to record the volume of mail at the facility. At the end of the day, he totals the numbers to record the total daily volume of mail and then discards them. The formal record of daily mail volume is retained and was turned over to the Union on request. On cross-examination, Barton was asked whether he understood the Union's request to mean that in the future the Union wanted to be provided with the daily mail volume count sheets:

A. What I viewed this to be was the Union was telling us that we must maintain this information.

Q. And provide it?

A. That's correct.

#### E. *LSM Rotation Lists*

Respondent has two LSM machines at the Wappingers Falls facility; as stated, *supra*, these are letter sorting machines. Each machine has 17 employees at any one time; the basic job classifications are 12 console operators, 2 ledge loaders, and 3 sweepers. In addition, there are different responsibilities among the 12 console operations. In order to make these jobs less wearisome and boring, and to make job assignments more equitable, about 5 years ago the Union and Respondent agreed that these LSM assignments would be rotated on a regular basis. Some supervisors prepare and post the LSM rotation list as much as a week ahead of time; others do so closer to the workday in question. Vaughn testified that in November, one of these LSM machines had no regular supervisor; the temporary supervisors for this machine were often unfamiliar with the rotation lists and were either not preparing a list or were not properly rotating the employees, resulting in a lot of complaints to the Union from these clerks. As a result, on November 10 (on the standard form) the Union requested copies of daily LSM rotation lists for tour 3. On November 13, Barton denied this request with the notation: “Not official—Not retained.” The Union made the same request on November 28 for the lists for the week November 27 through December 1 for tour 3. Barton also denied this request—“Not official—Not retained.” Vaughn testified that after receiving Barton's November 13 response that these LSM rotation lists are not retained, the Union made the November 28 request for a period in the future—

through December 1—so that Respondent would retain the lists, at least, for that week. He testified that the Union needed these lists in order to determine whether LSM employees had been improperly rotated. Barton testified that he would have approved the November 10 request, but since the lists are not retained, nothing was given to the Union. Barton's testimony regarding the November 28 request is somewhat puzzling since I found him to be, otherwise, a very credible witness:

It was a similar request that had already been determined on the previous request. It was not available because it was not retained. And that was essentially why I denied the second report, because the union was already provided with information that it wasn't retained and not available.

This response is clearly not responsive to the question, because (with the exception of November 27) the request was for future lists which, at the asking, could be retained. It is not as if the lists self-destruct.

#### IV. ANALYSIS OF REFUSAL TO PROVIDE INFORMATION ALLEGATIONS

In *Sheraton Hartford Hotel*, 289 NLRB 463 (1988), the Board set forth the rule to be applied in cases such as the instant matter, citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967), *Pfizer, Inc.*, 268 NLRB 916 (1984); and *South-ern Nevada Builders Assn.*, 274 NLRB 350, 351 (1985):

Section 8(a)(5) . . . obligates an employer to provide a union requested information if there is a probability that the information would be relevant to the union in fulfilling its statutory duties as bargaining representative. Where the requested information concerns wage rates, job descriptions, and other information pertaining to employees within the bargaining unit, the information is presumptively relevant. Where the information does not concern matters pertaining to the bargaining unit, the union must show that the information is relevant. When the requested information does not pertain to matters related to the bargaining unit, to satisfy the burden of showing relevance, the union must offer more than mere suspicion for it to be entitled to the information.

The initial allegation involves the 1986 Walkill conversion and whether Respondent has to provide the information, since any grievance filed in its regard would, apparently, be untimely, and, if Respondent is so obligated, has Santiamagro already supplied that information orally to Vaughn. My initial inclination is to find that since the Walkill conversion occurred in 1986, certainly, with the knowledge of the employees at the facility, a grievance about it would be time barred; therefore Respondent need not produce this information. Upon closer examination, I find otherwise. In *Safeway Stores*, 236 NLRB 1126 fn. 1 (1978), the Board stated:

before a union is put to the effort of arbitrating even the question of arbitrability, it has a statutory right to potentially relevant information necessary to allow it to

decide if the underlying grievances have merit and whether they should be pursued at all.

In *Island Creek Coal Co.*, 292 NLRB 480 (1989), the Board stated: "The Board does not pass on the merits of the union's claim that the employer breached the collective bargaining contract."

Although the evidence appears to establish that the Walkill conversion occurred in 1986, and that any grievance in that regard would be time barred, that is not a decision for me to make. Rather, I must decide whether the information sought is relevant according to the cases cited above. It clearly is relevant to the propriety of the conversion and the information must therefore be provided. If a resulting grievance is timebarred, that is for an arbitrator to decide.

The next issue is whether the information that Santiamagro gave to Vaughn satisfied this. As stated, *supra*, I found Santiamagro to be an extremely credible witness and credit his testimony over Vaughn. I, therefore, find that Santiamagro told Vaughn of the seniority order of the clerks at his facility, but not their seniority dates because he did not have that information and he does not have a seniority list at his facility because of its small size. Vaughn asked him for the Form 50 for White and Eichler. Santiamagro informed him that White's Form 50 was in Respondent's main facility in Poughkeepsie and Eichler's Form 50 contained no information regarding the 1986 conversion. Vaughn did not ask Santiamagro for their personnel files. He did ask how many current full-time bid positions were available at the Walkill facility and Santiamagro told him that there was one window clerk position. It appears that the only information that Santiamagro did not provide Vaughn with in this conversation that Vaughn had requested on August 1 are the last two items: the Form 50 for Eichler and White and any information in their personnel files regarding the conversion (which Vaughn did not ask Santiamagro about). As to these items, Respondent's refusal to provide the information violates Section 8(a)(1)(5) of the Act and I shall recommend that Respondent be ordered to provide this information to the Union.

The next issue is whether Respondent's refusal to provide the Union with the requested information for the non-APWU employees at Walden violates Section 8(a)(1) and (5) of the Act. As the Board stated in *Sheraton Hartford*, *supra* and *Pfizer*, *supra*, where a request is for information regarding employees outside of the bargaining unit, the union must establish the relevance of that information. In *Curtiss-Wright Corp.*, 145 NLRB 152, 157 (1971), the (then) trial examiner stated:

Stated simply, I believe there is a presumption of relevance when the data covers employees within the unit and that no such presumption exists when the employee is outside of the unit. . . . Therefore, the Union to be entitled to the data it seeks must establish, unmarked by any presumption of relevance, that the material bears a reasonable relation to the Union's role as bargaining representative.

As applied to the facts of the case, I find that Respondent must provide the Union with the information concerning the letter carriers, but not the rural carriers at the Walden facility. I agree with Respondent's position, and Barton's testi-

mony, that the rural carrier's job and compensation is so different from that of Castellano to make the requested information irrelevant to his situation. However, unlike the rural carriers, the letter carriers are covered by the same Agreement as the APWU employees, are paid on an hourly basis and punch a timeclock. Even though there is some merit to Barton's testimony distinguishing between the two crafts, they have enough in common so that tardiness in either would be disruptive of the facility's operation. I therefore find that the Union has established the relevance of this information concerning the letter carriers, but not the rural carriers and that the refusal to provide this information, as requested, violated Section 8(a)(1) and (5) of the Act. I shall therefore recommend that Respondent be ordered to provide the information requested on November 4 concerning the letter carriers (who are members of NALC) and the information concerning Johnson (who, apparently, was a clerk prior to becoming a supervisor) for the period requested.

As regards the final two issues—the restrictions on steward activity because of heavy mail volume and the LSM rotation lists (information which I find clearly relevant to the Union)—Respondent's response for not providing the information was virtually identical—that these were not official documents and (more importantly) they were not retained by Respondent. When a document is discarded prior to a valid request for its production there is nothing remaining to provide. In the instant situation, however, the Union requested this information in futuro. Although I found Barton to be an otherwise credible witness, he never explained why he did not provide the Union with the information after they requested it for a future period. It would have been a simple matter to save rather than discard the information. I therefore find that Respondent violated Section 8(a)(1) and (5) of the Act by refusing to provide the Union with the daily mail volume count maintained by its mail flow coordinator<sup>4</sup> and the daily LSM rotation lists for tour from November 27 through December 1.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent pursuant to Section 1209 of the PRA.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. APWU (and, through it, the Union) is the exclusive collective-bargaining representative of the following employees of Respondent, which is more fully described in the collective-bargaining agreement between the parties effective July 21, 1987, through November 20, 1990: maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks.

4. Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to provide the Union with information it requested between August 1 and November 28, said information being relevant and necessary to the Union as the collective-bargaining representative of the employees in the above-mentioned unit.

<sup>4</sup>In this regard, I find that the information turned over to the Union was not not an adequate substitute. The information requested, the daily mail volume count, apparently, is maintained on an hourly basis and would therefore be immediately available, and helpful in determining if the mail volume precluded steward activity on that particular day.

3. Respondent did not violate the Act as further alleged in the amended consolidated complaint.

#### REMEDY

It having been found that Respondent has violated Section 8(a)(1) and (5) of the Act by failing and refusing to provide the Union with information it requested between August 1 and November 28, 1989, it will be recommended that Respondent cease and desist therefrom and to promptly, upon re-request, supply said information (as set forth above and below) to the Union.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>5</sup>

#### ORDER

The Respondent, United States Postal Service, Poughkeepsie, Wappingers Falls, Wallkill, and Walden, New York, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to provide the Union with information it requested by letters between August 1 and November 28, 1989, said information being relevant and necessary to the Union as the collective-bargaining representative of certain of Respondent's employees.

(b) In any like or related manner interfering with, restraining, and coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly, on re-request, furnish the Union with the following information:

(i) Respondent's Form 50 for Joan Eichler and Mary White and any information in their personnel files concerning the Wallkill conversion, as per the Union's August 1, 1989 request.

(ii) All timecards, attendance records, and other information requested by the Union in its November 4, 1989 request, for the letter carriers at the Walden facility, as well as for Jay Johnson.

(iii) The daily mail volume count sheets for tour III at the Wappingers Falls facility, as maintained by the mail flow coordinator, as requested by the Union on November 13 and 20, 1989.

(iv) The LSM rotation lists, for tour III as requested by the Union on November 10 and 28, 1989.

(b) Post at its facilities in Poughkeepsie, Wappingers Falls, Wallkill, and Walden, New York, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the allegation that Respondent violated the Act by failing and refusing to meet with the Union's designated alternate stewards is hereby dismissed.

<sup>5</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>6</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."